

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
December 11, 2001 Session

HELEN HAYNES v. GATLINBURG AIRPORT AUTHORITY, INC., ET AL.

**Appeal from the Circuit Court for Sevier County
No. 98-713-II Richard R. Vance , Judge**

FILED JANUARY 31, 2002

No. E2001-01498-COA-R3-CV

Tenn. Code Ann. § 42-8-101, *et seq.*, prohibits the landing and taking off of helicopters within nine (9) miles of the boundary of a National Park. The Gatlinburg-Pigeon Forge Airport allows helicopters flying privileges which would be in violation of the prohibitory statutes if the boundary of the Park is determined by the inclusion of the Foothills Parkway in the National Park. The trial judge held that the Parkway was a part of the National Park but that the Legislature intended the “boundary” reference in the statute to mean the boundary of the Park proper, and thus the airport was not in violation of the statute. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

WILLIAM H. INMAN, SR. J., delivered the opinion of the court, in which HOUSTON M. GODDARD, P.J., and HERSCHEL P. FRANKS, J., joined.

David LeRoy Buuck, Knoxville, Tennessee, for the appellant, Helen Haynes.

Gregory Carlton Logue, Knoxville, Tennessee, for the appellee, Gatlinburg Airport Authority, Inc. and Sevier County, Tennessee.

Paul G. Summers, Attorney General & Reporter; Barry Turner, Deputy Attorney General, for the Intervenor Appellee, State of Tennessee and Tennessee Department of Transportation.

OPINION

This is a declaratory judgment action. For resolution are legal issues concerning the interpretation of Tenn. Code Ann. §§ 42-8-101 to -105, which prohibit land within nine miles of the boundary of the Great Smoky Mountains National Park from being used as a heliport. There is no genuine dispute of any material fact; the issue is one of law.

Appellant seeks to have the Park boundary reference in Tenn. Code Ann. § 42-8-102(a) construed to encompass the boundary of the Foothills Parkway, including the Gatlinburg Spur segment of the Parkway. If this interpretation is correct the statute will prohibit helicopters from

taking off or landing at the Gatlinburg-Pigeon Forge Airport, which would prompt a preemption action by the Federal Aviation Administration to invalidate Tenn. Code Ann. §§ 42-8-101 to -105.

Is the Park boundary reference in Tenn. Code Ann. § 42-8-102(a) the boundary of the Park proper? The issue is whether the legislature intended the restricted nine mile area to be measured from the boundary of the Foothills Parkway and the Gatlinburg Spur, thereby prohibiting helicopters from using the Airport. The trial court granted the State's motion for summary judgment, in which the Airport Authority and Sevier County joined. Our review is *de novo*, with no presumption of correctness. Rule 56.04, Tenn. R. Civ. P. ***Griffin v. Shelter Mutual Ins. Co.***, 18 S.W.3d 195 (Tenn. 2000).

The appellant resided in Sevier County.¹ His widow, Helen Haynes, currently resides there. He operated four (4) heliports in Sevier County for which he held licenses issued by the Department of Transportation. Three of these heliports were located on land within nine miles of the boundary of the Park proper; Pigeon Forge Heliport, Walden's Creek Heliport and Boondocks Heliport. On April 26, 1994, Haynes was informed that these three heliports were subject to the land use restriction in Tenn. Code Ann. §§ 42-8-101 to -105, and that his licenses would not be renewed.

His fourth heliport is located on land that is not within nine miles of the boundary of the Park proper, and his license had been renewed.

As we have noted, the issue in this case is the proper construction of Tenn. Code Ann. §§ 42-8-101 to -105 and particularly the reference to the "boundary of a national park established pursuant to 16 U.S.C. § 403." The Tennessee Department of Transportation (hereafter TDOT) interpreted the Legislature's "boundary" reference in Tenn. Code Ann. § 42-8-102(a) to be the boundary of the Park proper. Appellant argues that the Park boundary encompasses the Foothills Parkway, including the Gatlinburg Spur section of the Parkway.

Tenn. Code Ann. § 42-8-102(a), prohibits land within nine miles of the *boundary* of the Great Smoky Mountains National Park from being used as a heliport. This land use restriction applies to three Tennessee counties: Sevier, Cocke and Blount. The legislature directed TDOT, which licenses heliports, not to issue or renew licenses "for any heliport located on land subject to the [nine mile] prohibition in [§ 42-8-102(a)]." Tenn. Code Ann. § 42-8-102(b).

TDOT determined the restricted nine mile area by measuring from the boundary of the Great Smoky Mountains National Park as shown on the official General Highway Maps prepared and used by the Department in the regular course of its business. General Highway Maps are prepared by TDOT, through its Mapping Section, for each county in Tennessee.

The boundary of the Great Smoky Mountains National Park in Sevier, Cocke, and Blount counties is shown on these General Highway Maps. The boundary line shown is the boundary of

¹Mr. Haynes died during the pendency of this litigation.

the Park proper; these maps do not show a Park boundary which encompasses the Foothills Parkway, including the Gatlinburg Spur section of the Parkway.

These maps were prepared by TDOT's Mapping Section using official quadrangle maps of the United States Department of the Interior Geological Survey (hereafter USGS) which have lines designating the boundary of the Great Smoky Mountains National Park in Sevier, Cocke, and Blount Counties.

In 1944, Congress authorized construction of the Foothills Parkway. 16 U.S.C. § 403h-11. To date, only three sections of the Parkway, totaling less than 31 miles, have been opened to the public. One of the completed sections is the Gatlinburg Spur and Bypass in Sevier County.

The USGS maps depicting the Foothills Parkway in Blount County also show the boundary of the Parkway right-of-way, which is distinct from the National Park Boundary.

TDOT's Mapping Section did not place the Foothills Parkway right-of-way boundary on the Blount County General Highway Map, because as a matter of policy, the Department's General Highway Maps do not show the right-of-way boundary for any state or federal highway or road.

Appellant argues that the reference in Tenn. Code Ann. § 42-8-102(a) to the "boundary of a national park established pursuant to 16 U.S.C. § 403," the Legislature referred to the boundary of the Foothills Parkway and the Gatlinburg Spur. We disagree. The language of a statute is to be taken in a natural and ordinary sense without any forced or subtle construction. *Hall Contracting Corp. v. Tidwell*, 507 S.W.2d 697, 698 (Tenn. 1974). We agree with the State that the natural and ordinary meaning of the words "boundary of a national park" is the boundary of the Great Smoky Mountains National Park proper.

We have no quarrel with the argument that Congress intended the Parkway, as a federal road, to become part of the Park so that it could be operated and maintained by the National Park Service. But the issue here is not the intent of Congress, but the intent of the Tennessee Legislature, when it referred in Tenn. Code Ann. § 42-8-102(a) to the "boundary of a national park established pursuant to 16 U.S.C. § 403."

The reference in Tenn. Code Ann. § 42-8-102(a) to the "boundary of a national park" identifies the point from which the restricted nine mile area is to be measured. "In construing statutes the words must be given their natural effect and import." *Stalcup v. City of Galinburg*, 577 S.W.2d 439, 443 (Tenn. 1978). The words "should be taken in a natural and ordinary sense without any forced or subtle construction." *Tidwell*, 507 S.W.2d at 699. The natural and ordinary effect and import of the words "boundary of a national park" is the boundary of the Park proper. It would be a forced construction of these words to construe them as meaning the boundary of the Foothills Parkway and the Galinburg Spur, as the appellant contends.

Significantly, even Congress recognized that a road providing access into and scenic views of the Park is not the same as the Park itself. In the enabling legislation for the Foothills Parkway,

Congress referred to a “scenic parkway to be located generally parallel to the *boundary of the Great Smoky Mountains National Park* and connecting *with the park*, in order to provide an appropriate *view of the park* from the Tennessee side.” 16 U.S.C. § 403h-11 (emphasis supplied).

Nothing on the face of Tenn. Code Ann. §§ 42-8-101 to -105, or in the preamble suggest the General Assembly meant the boundary of the Foothills Parkway, including the Gatlinburg Spur, when it used the words, “boundary of a national park” in these statutes. The Parkway is a fragmented roadway, far from complete, and may never be completed. Since Congress authorized the Parkway in 1944, to date only three separate sections have been opened, the last one in 1981.

From a more practical aspect, to construe the boundary reference in Tenn. Code Ann. § 42-8-102(a) as encompassing the Foothills Parkway and the Gatlinburg Spur would require a conclusion that the Legislature intended to include the Gatlinburg-Pigeon Forge Airport in the restricted areas, because it is within nine miles of the boundary of the Spur segment of the Parkway. This conclusion finds no rational support in the record. We reference the Legislature’s efforts to address the unique heliport problem in Sevier, Cocke and Blount counties, and that it never sought to prohibit helicopters from taking off or landing at the Airport.

Finally, we note that if a statute is ambiguous, the courts should defer to the reasonable interpretation of the statute by the agency charged with its implementation. The Supreme Court has long held that if a statute is of uncertain meaning, administrative interpretations “are accorded persuasive weight and will be followed unless palpably erroneous.” *Estrin v. Moss*, 430 S.W.2d 345 (Tenn. 1968), *Riggs v. Burson*, 941 S.W.2d 44 (Tenn. 1997). The interpretation of the statutory scheme involved in this litigation is clearly not erroneous, and the judgment is affirmed at the costs of the appellant.

WILLIAM H. INMAN, SENIOR JUDGE